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99-00344
USDC/FR
Judge Rivera
G. Miller

**United States Court of Appeals
For the First Circuit**

No. 01-2250

↓
#496

UNITED STATES,

Appellee,

v.

LUIS A. NAZARIO RODRIGUEZ,

Defendant, Appellant.

Before

Lynch, Lipez and Howard,
Circuit Judges.

JUDGMENT

Entered: October 28, 2004

After a thorough review of the record and of the parties' submissions, we affirm in part, vacate in part, and remand for resentencing.

Given the nature of the offense and Nazario's background and characteristics, we see no abuse of discretion in the court's imposition of a special condition requiring disclosure of Nazario's financial information upon request. The condition will allow the probation officer to detect any disparity between Nazario's limited educational and employment background, on the one hand, and his income and lifestyle on the other, a disparity which might indicate a return to illegal activity. See United States v. Melendez-Santana, 353 F.3d 93, 107 (1st Cir. 2003) ("Forcing [appellant] to provide financial records to the probation officer would assist the officer in detecting whether he has returned to his criminal ways."); United States v. Mansur-Ramos, 348 F.3d 29, 33 (1st Cir. 2003) ("The special condition allows the court, through the probation department, to monitor the appellant's earnings and

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SAN JUAN, P.R.

identify any potential disparity between his income and his lifestyle.").

The drug treatment condition of supervised release is vacated insofar as it delegates to the probation officer the discretion to determine whether the appellant should enter drug treatment upon testing positive for drug usage. The drug testing condition is vacated insofar as it delegates to the probation officer the authority to set the number of tests. We remand the matter in light of Melendez-Santana, 353 F.3d at 106.

Judgment affirmed in part; vacated in part and remanded. See 1st Cir. R. 27(c).

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

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FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: *Betty McEwen* 12/20/04

[cc: Cert Copies to Hon. Juan M. Perez-Giminez and Frances Rios
de Moran, Clerk, USDC for the District of Puerto Rico]

[cc: Messrs. Gauthier-Inesta, Perez-Sosa, Vega Pacheco
and Ms's Gonzalez de Miranda and Vega]